

NOT FOR PUBLICATION

OCT 06 2003

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHERYL DENICA CALL,

Defendant - Appellant.

No. 01-50439

D.C. No. CR-00-0431-SVW-02

ORDER AMENDING
MEMORANDUM AND
DENYING PETITIONS FOR
REHEARING AND
PETITIONS FOR REHEARING
EN BANC

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LAROY ALVIN BERRY,

Defendant - Appellant.

No. 01-50447

D.C. No. CR-00-00431-SVW-1

BEFORE: REINHARDT, O'SCANNLAIN and FISHER, Circuit Judges.

The memorandum filed at 2003 WL 21961526, August 18, 2003, is
amended as follows:

*This disposition is not appropriate for publication and may not be cited to
or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

At pages 10-11, change footnote five to read:

⁵ It is irrelevant to our analysis of the sufficiency of the evidence on the conspiracy count that the jury acquitted Call of one of the substantive counts of distribution of cocaine base (Count IV) and Berry of all substantive counts of distribution of cocaine base (Counts V and VI). *See United States v. Hart*, 963 F.2d 1278, 1282 (9th Cir. 1992) (“We review the sufficiency of the evidence for a given count independent of the jury’s determination that evidence on another count was insufficient. Therefore, O’Connell’s acquittal on the distribution count does not affect our consideration of the evidence supporting his conviction for conspiracy.”) (internal quotation marks omitted).

Having adopted this amendment, the panel has voted to deny appellants’ petitions for rehearing and petitions for rehearing en banc.

The full court has been advised of the petitions for rehearing en banc and no judge of the court has requested a vote on whether to rehear the matter en banc.

Fed. R. App. P. 35.

Appellants’ petitions for rehearing and petitions for rehearing en banc, filed by appellant Berry on August 28, 2003 and by appellant Call on September 2, 2003, are DENIED.